

Washington State Auditor's Office

Audit Report

Audit Services

Report No. 58108

CITY OF NEWPORT

Pend Oreille County, Washington

January 1, 1995 Through December 31, 1995

Issue Date: March 14, 1997

TABLE OF CONTENTS

	Page
<hr/> Management Section <hr/>	
Independent Auditor's Report On Compliance With State Laws And Regulations . . .	M-1
Schedule Of Findings:	
1. The City Should Implement Policies And Procedures For Exempt Employees	M-2
<hr/> Financial Section <hr/>	
Independent Auditor's Report On Financial Statements And Additional Information	F-1
Financial Statements:	
Fund Resources And Uses Arising From Cash Transactions - 1995	F-3
Notes To Financial Statements	F-11
Additional Information:	
Schedule Of Long-Term Debt - 1995	F-21
Schedule Of State Financial Assistance - 1995	F-23
<hr/> Addendum <hr/>	
Directory Of Officials	A-1

CITY OF NEWPORT
Pend Oreille County, Washington
January 1, 1995 Through December 31, 1995

**Independent Auditor's Report On Compliance With State
Laws And Regulations**

Mayor
City of Newport
Newport, Washington

We have audited the financial statements, as listed in the table of contents, of the City of Newport, Pend Oreille County, Washington, as of and for the fiscal year ended December 31, 1995, and have issued our report thereon dated November 12, 1996.

We also performed tests of compliance with state laws and regulations as required by *Revised Code of Washington* (RCW) 43.09.260. This statute requires the State Auditor to inquire as to whether the city complied with the laws and the *Constitution of the State of Washington*, its own ordinances and orders, and the requirements of the State Auditor's Office.

Compliance with these requirements is the responsibility of the city's management. Our responsibility is to make a reasonable effort to identify any instances of misfeasance, malfeasance, or nonfeasance in office on the part of any public officer or employee and to report any such instance to the management of the city and to the Attorney General. However, the objective of our audit of the financial statements was not to provide an overall opinion on compliance with these requirements. Accordingly, we do not express such an opinion.

The results of our tests indicated that, with respect to the items tested, the city complied, in all material respects, with the applicable laws and regulations referred to in the preceding paragraphs. However, we noted an instance of noncompliance of regulatory requirements immaterial to the financial statements which is identified in the Schedule of Findings accompanying this report. With respect to items not tested, nothing came to our attention that caused us to believe that the city had not complied, in all material respects, with those provisions.

This report is intended for the information of management and the mayor and to meet our statutory reporting obligations. This report is a matter of public record and its distribution is not limited. It also serves to disseminate information to the public as a reporting tool to help citizens assess government operations.

Brian Sonntag, CGFM
State Auditor

CITY OF NEWPORT
Pend Oreille County, Washington
January 1, 1995 Through December 31, 1995

Schedule Of Findings

1. The City Should Implement Policies And Procedures For Exempt Employees

During our audit of the city's payroll system we found the following areas of concern with the leave time taken by exempt employees:

- a. There are not established written procedures for leave of exempt employees. Leave, or other absences from work, has been taken by both the city administrator and clerk/treasurer without supporting documentation.
- b. There are not established written procedures for the cashing out of annual leave of employees. At year end 11 days of unused vacation leave was paid to the city administrator. The city's personnel policies, applicable to non-exempt employees, does not allow cash payments for excess vacation.
- c. There are not established written procedures for the use of sick leave for exempt employees. The city administrator missed three months of work for medical reasons and was home for approximately 60 days as documented on the annual time summary report. Subsequently the mayor authorized crediting back 30 days of sick leave to the city administrator without supporting documentation.

By not establishing written policies and procedures for exempt employees, the city is unable to determine if they have appropriately compensated exempt employees. This results in a lack of public accountability and control regarding use of compensated leave time by exempt employees.

The city has not established written policies and procedures for exempt employees.

We recommend that the city council adopt and implement written policies and procedures covering the use of leave time for exempt employees.

Auditee's Response

FACTS

On January 13, 1997 the City of Newport Mayor, City Administrator, Clerk Treasurer, and City Attorney met with state auditors in Spokane, Washington to work out agreed upon wording for the audit finding. The City officials left the meeting believing that an agreement had been crafted that met everyone's needs. Although some of the language of the agreement did find its way into the finding the wording of the draft finding contains inaccuracies that were pointed out and is misleading. The auditor, when confronted denied reaching an agreement and seems to prefer wording that he knows to be factually inaccurate and to be misleading.

ARGUMENT

A. Paragraph a. of the Finding is misleading.

The agreed upon wording contained a statement that indicated that the use of the leave was authorized and that auditing would be facilitated by written procedures.

There simply is no requirement for written approval of sick leave or vacation. The City's documentation process was explained to the auditor. The auditor's present finding does not reflect that the use of leave was authorized.

The use of the word leave by the auditor in paragraph a is designed to avoid using the term compensatory time while trying to deal with the fact that an exempt employee is not always on the job 40 hours a week. However, an exempt employee can finish a task and be sent home by the mayor because there is nothing else to do that day without it affecting the employee's pay, and without using leave. Because an exempt employee does not work on the clock, when he or she is sent home by the mayor because there is no reason to keep him or her on the job site, there is no leave taken so there is no reason to document the taking of leave.

B. PARAGRAPH b. OF THE AUDIT FINDING CONTAINS AN INACCURACY THAT IS MISLEADING.

The sentence regarding the personnel policy was dropped from the agreed wording because the personnel policy does not apply to exempt employees. Although the sentence now contains language that is slightly more accurate it still does not reflect the status of the personnel manual in regards to exempt employees. The auditor was told that only the number of days of sick leave and vacation are taken from the employee manual. All else does not apply.

1. The personnel manual.

The policy manual cited by the Auditor does not apply to exempt employees. The City of Newport's Personnel Manual is very explicit on its front page regarding its lack of application to exempt employees.

"These personnel rules shall apply to all City employees except elected officials, exempt employees and independent contractors." City of Newport Personnel Policy pg. 1.

The policy defines an exempt employee on page two as follows:

"5. EXEMPT EMPLOYEE: An employee who holds an administrative profession or executive position which is defined as exempt under the wage/hours laws of the Fair Labor Standards Act." Ibid p.2

The requirement in the City of Newport's employee policy manual providing for overtime for extraordinary circumstances has been negated by case law, most recently in applying the Washington State Minimum Wage Law R.C.W. 49.46. Tift v. Nursing Services, 76 Wn App. 577 (1995); for the federal law see Sutton V. Engineered Systems Inc., 598 F.2d 1134 (1979). The general principal is that "Under the provisions of the Fair Labor Standards Act or similar legislation executive employees are exempt from the statutory requirements as to minimum wages and overtime pay." 51B C.J.S. Section 1104 at 566. Newport Municipal Code specifies that "In the event that the city personnel policy rules, guidelines and procedures conflict with civil service rules, federal or state laws, then the terms and conditions of the civil service rules, federal and state laws shall govern." N.M.C. 2.41.040.

2. Personnel Policies Beyond the Personnel Manual

There simply is no maybe in the language of the personnel manual regarding its applicability to exempt employees. The City of Newport's personnel policy manual does not apply to exempt employees. The sentence ... "The city's personnel policies, which may not apply to the City Administrator, does not

allow cash payments for excess vacation." ... is misleading. There is a personnel policy for the city that applies to the City Administrator. It is not in writing. It does allow cash payments for vacation not taken by exempt employees.

C. PARAGRAPH c CONTAINS AN INACCURACY.

Although paragraph c does show the agreed language it drops the reference to the supporting documentation from the last sentence. Dropping the reference to the supporting documentation after the supporting documentation was pointed out to the auditor and appropriate language was agreed upon transformed the last sentence of paragraph c into a falsehood. Returning "except for the letter by the mayor" to the end of the last sentence would make the sentence truthful. Exempt employees cannot be required to keep track of time.

D. THE GENERAL POWERS OF THE MAYOR.

The City of Newport is a noncharter code city, N.M.C. 1.08.010, governed in its activities by R.C.W. 35A with a mayor council form of government N.M.C. 1.08.020. Most specifically the mayor's authority and duty is set out at R.C.W. 35A.12.100. The mayor has specified authority regarding the administration of the city and the supervision of employees.

"The mayor shall be the chief executive and administrative officer of the city, in charge of all departments and employees. He shall see that all laws and ordinances are faithfully enforced and that law and order is maintained in the city, and shall have general supervision of the administration of city government and all city interests. . . . He shall see that all contracts and agreements made with the city for its use and benefit are faithfully kept and performed . . . " R.C.W. 35A.122.100.

The mayor is charged with supervising employees, with maintaining order in the city, supervising the administration of the city, and with seeing to it that the city faithfully performs its contracts. Consequently, when the mayor credited back the sick leave of the administrator because it turned out that the city administrator had worked at home enough to justify doing that the mayor was directing an administrative employee to correct an error in the city records to enforce employment contracts to prevent the city from stealing from an employee who should not have been on sick leave. To have done otherwise would have violated the mayor's official duty and imposed an injustice upon an employee of the city.

Certainly a mayor can direct an employee in his administration, in order to prevent an injustice from being perpetrated, thus minimizing the liability of the city from a potential lawsuit by the employee, all the while exercising the mayor's statutorily imposed duty to enforce contracts, for employment including contracts implied or oral contracts without council approval.

The City of Newport has a strong mayor form of government with employees working at the will and pleasure of the mayor.

The opinion of the City Attorney of the City of Newport is that the mayor acted within his statutory authority.

Excepting those under civil service such as the Chief of Police, the exempt employees are totally at will. Their base conditions of employment are set out in the ordinance that creates their position, and such ordinances as N.M.C. 2.44, 2.43, 2.42, 2.40, 2.32 etc., and the specific directions of the mayor in the exercise of his broad at will powers. Appointments are confirmed by the council N.M.C. 2.40. The council establishes payment schedules by resolution and by budget ordinances and approves all checks paid to the employees.

The authority of the council to interfere with the executive branch of the city government is limited. The council can hire its own employees and officers but cannot force the mayor to use them. The

correction the mayor made does not impose a new benefit upon an exempt employee which must be confirmed by the council under ordinance NO. 788 but rather makes an administrative correction.

"The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees; within the limitations imposed by vested rights, to fix the compensation and working conditions of such officers and employees . . ." R.C.W. 35A.11.020.

The mayor appoints the exempt employees and the council confirms those appointments. The mayor supervises the administration of employees. The mayor can correct administrative mistakes without council approval. The mayor may fire the exempt employees without council approval.

The council approved the payment of unused vacation by the city Administrator. The Mayor acted legally and with authority within the personnel policy of the city for exempt employees in directing the payment of unused vacation for that exempt employee.

CONCLUSION

It is the opinion of the City Attorney of Newport that the wording originally agreed on for the audit control finding is more truthful and more accurately reports the findings and respects the power and authority of the Mayor. All actions taken by the Mayor were legal and authorized.

Auditor's Concluding Remarks

The meeting described by the city did, in fact, take place. The agreed upon wording is included in the preceding finding. However, we did not make all of the changes requested by the city's management and attorney. This finding encourages the city's management to establish public accountability for public officials; we are not suggesting that the city violate the Fair Labor Standards Act. We are recommending that the city council establish, in writing, policies to address the issues noted during the audit. Thus, we reaffirm our finding.

We also wish to thank the city's officials and personnel for their assistance and cooperation during our audit.

CITY OF NEWPORT
Pend Oreille County, Washington
January 1, 1995 Through December 31, 1995

**Independent Auditor's Report On Financial Statements And Additional
Information**

Mayor
City of Newport
Newport, Washington

We have audited the accompanying statements of Fund Resources and Uses Arising from Cash Transactions of the various funds of the City of Newport, Pend Oreille County, Washington, for the fiscal year ended December 31, 1995. These financial statements are the responsibility of the city's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatements. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

As described in Note 1 to the financial statements, the city prepares its financial statements on the cash basis of accounting that demonstrates compliance with Washington State statutes and the *Budgeting, Accounting and Reporting System* (BARS) manual prescribed by the State Auditor, which is a comprehensive basis of accounting other than generally accepted accounting principles.

In our opinion, the financial statements referred to above present fairly, in all material respects, the recognized revenues and expenditures of the funds of the City of Newport for the fiscal year ended December 31, 1995, on the cash basis of accounting described in Note 1.

Our audit was made for the purpose of forming an opinion on the financial statements taken as a whole. The accompanying Schedule of Long-Term Debt and Schedule of State Financial Assistance are presented for purposes of additional analysis and are not a required part of the financial statements.

Such information has been subjected to the auditing procedures applied in the audit of the financial statements and, in our opinion, is fairly presented in all material respects in relation to the financial statements taken as a whole.

Brian Sonntag, CGFM
State Auditor

November 12, 1996